

**CALIFORNIA COASTAL COMMISSION**

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**W10c.**

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**STAFF REPORT: REGULAR CALENDAR**

**APPLICATION NUMBER:** 5-03-402

**APPLICANT:** Bubba Gump Shrimp Company & City of Santa Monica

**AGENT:** Howard Laks

**PROJECT LOCATION:** 301 Santa Monica Pier, Santa Monica

**PROJECT DESCRIPTION:** Demolition of an existing two story 6,859 square foot restaurant and construction of a new three story 8,955 square foot restaurant with 2,511 square feet of outdoor dining, 415 square feet of retail space, and a public elevator.

**LOCAL APPROVALS RECEIVED:** Approval in Concept; Development Review Permit 02-008; Conditional Use Permit 02-011.

**SUBSTANTIVE FILE DOCUMENTS:** Santa Monica certified Land Use Plan; Environmental Impact Report No. 03-002.

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**SUMMARY OF STAFF RECOMMENDATION:**

The major issues of this staff report include possible geologic impacts and coastal access. Staff recommends **APPROVAL** of the proposed development with nine special conditions including: 1) signage plan; 2) submittal of final approval from State Department of Parks and Recreation; 3) compliance with City permit requirements; 4) compliance with City's water quality requirements; 5) Future Development restriction 6) written agreement to assume all risk for the lessee; 7) written agreement to assume all risk for the lessor; 8) conformance of design and construction plans to geotechnical report; 9) agreement that no future shoreline protective device shall be constructed; and 10) the implementation of construction material and debris Best Management Practices.

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**STAFF RECOMMENDATION:**

**MOTION:**        *I move that the Commission approve Coastal Development Permit No. 5-03-402 pursuant to the staff recommendation.*

**STAFF RECOMMENDATION OF APPROVAL:**

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

**RESOLUTION TO APPROVE THE PERMIT:**

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

**II.     STANDARD CONDITIONS:**

1.     Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2.     Expiration. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3.     Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.

4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

### III. **SPECIAL CONDITIONS**

#### 1. **Public Signage**

**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the co-applicant, Bubba Gump Shrimp Company, will submit, for the review and written approval of the Executive Director, a signage plan showing the size, wording and location of signs. The size of the signs shall be at least 14" in height and 18" in length. The signage shall be located in conspicuous locations along the frontage of the building on the pier deck as well as on the western and eastern side of the building at beach level, informing the public of the availability and location of the public elevator.

The permittee, Bubba Gump Shrimp Company, shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

#### 2. **Final Approval from State Department of Parks and Recreation**

**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants will submit, for the review and written approval of the Executive Director, written evidence from the State Department of Parks and Recreation indicating that the applicants have permission to encroach onto and use State Beach property for the proposed project as described under this permit.

#### 3. **Compliance with City Permit Requirements**

With the acceptance of this permit the co-applicant, Bubba Gump shrimp Company, agrees to comply with all conditions of the City of Santa Monica's Development Review Permit 02-008 and Conditional Use Permit 02-011, as stated in the City's Statement of Official Action, certified on November 11, 2003 (see Exhibit No. 7).

**4. Water Quality Standards**

With the acceptance of this permit the co-applicant, Bubba Gump Shrimp Company, agrees to comply with all applicable City of Santa Monica water quality requirements under the City's Municipal Code, as required by the City, that are in effect at the time of approval of this permit.

**5. Future Development**

A. This permit is only for the development described in coastal development permit No. 5-03-402. Except as provided in Public Resources Code section 30610 and applicable regulations, any future development as defined in PRC section 30610, including, but not limited to, a change in height, bulk or lot coverage, as shown on plans, dated May 2003, and any change to the density or intensity of use land, or change from the project description, as proposed by the applicant, shall require an amendment to Permit No. 5-03-402 from the California Coastal Commission or shall require an additional coastal development permit from the California Coastal Commission or from the applicable certified local government.

By acceptance of this permit, the applicant-lessee, Bubba Gump Shrimp Company, and the applicant-lessor, City of Santa Monica, acknowledges and agrees to include a provision in any subsequent lease, sublease, or assignment of such property requiring the lessee to submit a written agreement to the Commission, for the review and approval of the Executive Director, incorporating all of the terms of subsection A of this condition.

B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant-lessee, Bubba Gump Shrimp Company, and the applicant-lessor, City of Santa Monica, shall submit a written agreement or agreements, in a form and content acceptable to the Executive Director, incorporating all of the above terms of this condition.

**6. Assumption of Risk, Waiver of Liability and Indemnity Agreement Applicable to Applicant-Lessee**

A. By acceptance of this permit, the applicant-lessee, Bubba Gump Shrimp Company, on behalf of (1) itself; (2) its successors and assigns and (3) any other holder of the possessory interest in the development authorized by this permit, acknowledges and agrees (i) that the site may be subject to hazards from wave and tidal action; (ii) to assume the risks to the applicant-lessee and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including

costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards; and (v) to include a provision in any subsequent sublease or assignment of the leased land or the development authorized by this permit requiring the sublessee or assignee to submit a written agreement to the Commission, for the review and approval of the Executive Director, incorporating all of the restrictions identified in (i) through (v).

**B.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, Bubba Gump Shrimp Company, as applicant-lessee, shall submit a written agreement, in a form and content acceptable to the Executive Director, incorporating all of the above terms of this condition.

**7. Assumption of Risk, Waiver of Liability and Indemnity Agreement Applicable to Applicant-Lessor**

**A.** By acceptance of this permit, the applicant-lessor, City of Santa Monica, acknowledges and agrees (i) that the site may be subject to hazards from wave and tidal action; (ii) to assume the risks to the applicant-lessor, City of Santa Monica, and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards; and (v) to include a provision in any subsequent lease of such property requiring the lessee to submit a written agreement to the Commission, for the review and approval of the Executive Director, incorporating all of the terms of subsection A of the prior condition.

**B.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the City of Santa Monica, as applicant/lessor, shall submit a written agreement, in a form and content acceptable to the Executive Director, incorporating all of the above terms of this condition.

**8. Conformance of Design and Construction Plans to Geotechnical Report**

**A.** All final design and construction plans, including foundations, floor plans and grading shall be consistent with all recommendations contained in the Engineering Geologic Reports prepared by Geotechnologies, Inc. dated June 8, 2001. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit, for the Executive Director's review and approval, evidence that an appropriate licensed professional has reviewed and approved all final design and construction plans and certified that each of those final plans is consistent with all of the recommendations

specified in the above-referenced geologic evaluation approved by the California Coastal Commission for the project site.

**B.** The permittees shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

**9. No Future Shoreline Protective Device**

**A.** By acceptance of this Permit, the applicants agrees, on behalf of themselves and all successors and assigns, that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. **5-03-402** in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, or other natural hazards in the future. By acceptance of this Permit, the applicants hereby waives, on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.

**B.** By acceptance of this Permit, the applicants further agrees, on behalf of themselves and all successors and assigns, that they shall remove the development authorized by this Permit, including the restaurant structure and pilings, if any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the applicants shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

**10. Storage and Removal of Construction Material and Debris**

The permittee shall comply with the following construction-related requirements:

- (a) No construction materials, debris, or waste shall be placed or stored outside the staging area where it may be subject to wave erosion and dispersion;
- (b) Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of construction and the site restored to its previous natural condition;
- (c) Best Management Practices (BMPs) designed to prevent spillage and/or runoff of construction related materials, sediment or contaminants associated with construction activity, shall be implemented prior to the on-set of such activity. Selected BMPs shall be maintained in a functional condition throughout the duration of the project.

- (d) Construction debris and sediment shall be removed from construction areas each day that construction occurs to prevent the accumulation of sediment and other debris which may be discharged into coastal waters.

#### **IV. FINDINGS AND DECLARATIONS:**

The Commission hereby finds and declares:

##### **A. Project Description and Location**

The proposed project is the demolition of an existing 6,859-square foot, two-story restaurant structure located on the Santa Monica Pier and the construction of a three-story, 8,955 square-foot restaurant with two levels of outdoor dining decks, Pier level retail space, and public elevator. The restaurant would include 2,019 square feet of indoor service and seating, 386 square feet of bar area, 2,511 square feet of outdoor dining patios on the beach and pier levels, a 415 square-foot retail area opening onto the Pier, and 3,624 square feet of support area including kitchen and storage on the ground floor, service area on the main floor and storage space and offices on a mezzanine level. Outdoor dining areas will be protected with glass windscreens, with a solid roof covering over the second floor patio. The proposed structure will consist of three levels, with a total building height of 40.9 feet from the first level to the top of the parapet, and 27.8 feet in height as measured from the Pier deck to the top of the parapet (see Exhibits No. 2-4).

The new building will be constructed on new pilings with the old pilings removed or cut at or near the surface.

Construction staging is proposed on the beach immediately north of the building site and west of the beach parking lot and bike path. The staging area will occupy approximately 12,000 square feet, and measure approximately 91 feet wide by 130 feet long (see Exhibit No. 5). The applicant will install a temporary chain link fence with screening.

The subject site is located on the Santa Monica Pier, in the City of Santa Monica. The project is located on the north side of the pier. To the west is a public staircase from the beach level to the Pier deck. On the Pier deck to the south is a plaza area and Santa Monica Police sub-station, with a number of food service, retail and recreational uses, including Pacific Park, an amusement park, and a fishing pier and harbor office at the western end of the Pier. The National Historic Landmark Looff Hippodrome (Carousel) building is located to the east.

The existing restaurant (Boathouse) is the only structure located on the north side of the Santa Monica Pier. The restaurant closed in March 2002, and is currently vacant. The Bubba Gump Shrimp Company (co-applicant) has signed a lease with the City of Santa Monica (co-applicant) to construct and operate a new family-style restaurant in place of the Boathouse Restaurant.

The proposed 8,955 square-foot restaurant is larger than the existing two-story Boathouse Restaurant structure, which is 6,859 square feet including outdoor seating areas. However, the amount of serviceable area is approximately the same. The proposed structure would include two stories of customer area and a third story containing office and storage areas. Glass-enclosed outdoor seating areas would be located at the Pier level and at the lower level. A small retail store is proposed on the front façade on the Pier deck.

The existing building has existed on the Pier prior to the Coastal Act. In 1991, the Commission granted a permit to add a 1,457 square foot outdoor dining area to the restaurant [5-90-1148 (City of Santa Monica)]. The outdoor dining area is located on State beach property. The applicant received a lease for use of the property from State Lands.

## **B. Pier Background**

In 1908, the first Municipal Pier was built at the present Pier location. The Pleasure Pier (also known as the Newcomb Pier) was built adjacent to the Municipal Pier in 1916. In 1920 the Pier failed and reconstructed in 1921. The Pleasure Pier featured the Looft Hippodrome, which housed the famed carousel, as well as a roller coaster and other entertainment features. Throughout the 1920's and 1930's the Pier flourished as an entertainment and recreation center for visitors and tourists.

Succeeding decades, however, saw a decline in the Pier and in 1973, the City Council ordered its demolition. A citizen's group, interested in saving the pier, successfully placed an initiative on the ballot and the citizenry voted to save the Pier. Other measures to preserve the historical integrity of the Pier included its designation as a County of Los Angeles Historical Landmark in 1975, and a City of Santa Monica Landmark in 1976. In addition, the Looft Hippodrome (carousel building) was designated a National Historic Landmark in 1988.

In 1981, the City Council created the Pier Task force to develop guidelines for the restoration of the pier. The guidelines that were developed had a historical perspective and allowed for the restoration of the Pier in a manner reflecting former uses as well as present ones.

However, in 1983, winter storms destroyed over 100,000 square feet of the western end of the wooden pier platform, and the remaining Pier suffered serious structural damage. In 1983, the Pier Restoration Corporation (PRC) was created to orchestrate reconstruction and redevelopment of the Pier. Reconstruction of the Pleasure Pier and the Municipal Pier was completed in 1991 (Coastal Development Permits 5-86-956 and 5-89-703).

The existing pier platform consists of 413,056 square feet of area. The Pier's current uses include a number of restaurants, fast food establishments, small retail shops, an arcade and an amusement ride area (CDP #5-92-345). The western end of the pier is used for



fishing and is improved with the Harbor Guard office and a display area for pier history and marine related issues, bait shop and a restaurant.

The Pier is owned by the City of Santa Monica and leases space on the pier to individual operators. The underlying property, on which the pier is located has been granted to the City by the State of California. The restaurant building space has been part of the pier since the 1930's. However, the existing outdoor dining area was added in 1991 (Coastal Development Permit No. 5-90-1148). In 1991, the State granted to the City of Santa Monica a lease to extend the restaurant seating out onto State beach property.

### **C. Public Beach Access**

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211 of the Coastal Act states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30221 of the Coastal Act states:

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

In addition policy #47 of the Santa Monica LUP states in part that:

The Santa Monica Pier shall be maintained as a recreational resource including amusements, public areas for low-cost recreational uses, fishing, and strolling, visitor-serving development and public parking. Commercial uses shall be visitor-serving consistent with the character of the Pier, shall preserve the Pier's historic ambience and shall be located and designed to complement the public areas. New development on the platform of the Pier may be permitted up to a maximum of 140,000 square feet.

The Santa Monica Pier is a regional coastal visitor-serving recreational resource. According to the City of Santa Monica's certified Land Use Plan (LUP), the Pier attracts approximately 3 million visitors each year. The pier provides primarily low-cost public recreational opportunities. The piers current uses include a carousel, amusement ride

area, food service establishments, retail shops, and fishing. The Pier provides pedestrian access throughout its length and along its perimeter.

The proposed project will replace an existing restaurant that extends from the pier deck to the sand below. The project site is located on the north side of the pier and immediately west of the beach parking lot (1550 Lot) and the beach bike path. The main restaurant building has existed on the Pier prior to the Coastal Act. In 1991, the Commission granted a permit to add a 1,457 square foot outdoor dining area to the restaurant over the beach sand.

A wooden boardwalk exists along the northern and western portion of the restaurant (see Exhibit No. 2). The boardwalk extends from the adjacent public beach lot (1550 Lot), located northeast of the project site, to a stairway that provides beach level access to the pier deck. The boardwalk also extends to the northwest to allow handicap access closer to the water. The boardwalk also provides outdoor showers at the foot of the stairs.

As proposed, the new restaurant will be sited within the same footprint as the existing restaurant, except for minor changes to the stairs in the northeast corner, for compliance with American Disability Act (ADA) requirements, which includes a public walkway leading to the proposed elevator, along the western portion of the building. The walkway to the elevator along the western portion of the building will be 3 to 4 feet wide and ADA compliant, and will require minor modification to the base of the adjacent public stairway that leads to the pier deck. The elevator will be incorporated into the design of the restaurant. Although the elevator entrance will be within the building, it will be designed to be separate from the restaurant so that one will not need to enter into the restaurant to use the elevator. The elevator will connect the beach boardwalk, beach parking lot, and the restaurant on the Pier deck, in a manner that is accessible to the handicapped.

The demolition and new construction on the Santa Monica Pier and adjacent to the public beach, will have the potential to impact beach access and recreational activities. The environmental analysis and the City's local review of the project considered these impacts, with particular concern regarding the summer months. Of major concern was the location and operation of the staging area. Because of the location of the site and potential for impacts to public access, possible staging areas were limited. Initially, the project contractor and City considered using the adjacent 1550 beach parking lot for staging. However, due to the potential temporary loss of public parking during high use periods in the winter and summer, and conflicts that would be created by movement of materials across the bike path that runs between the parking lot and project site, that would cause numerous disruptions throughout the day to users of the bike path, the City decided that this alternative would have significant impacts to public access that could not be mitigated. The Pier deck was another alternative considered, but due to pedestrian circulation impacts and load capacity of the Pier, the Pier could not be used. Therefore, the City selected the beach area directly north of the restaurant and west of the parking lot and bike path.

The staging area will measure approximately 91 feet by 130 feet. The City will require the applicant to construct a temporary pedestrian path around the staging area, connecting the parking lot and beach with the public pier stairway located to the west of the building site. The City is also requiring the applicant to cover the staging area with a wood platform for water quality purposes. The temporary path and wood platform will be removed at the end of construction. To further mitigate construction activity and pedestrian/bikepath conflicts on the bike path, the City is restricting the number and duration of equipment crossings across the bike path. According to the City's permit condition, after 9:00 A.M. Monday through Saturday, equipment is allowed to be moved across the bike path five times daily for a maximum of two minutes per interruption.

The location of the staging area on the sand north of the site and west of the beach bike path minimizes movement of construction equipment that would inconvenience or endanger pedestrians and users of the bike path. Together with the restriction on hours in which the bike path may be closed in order to allow movement of construction equipment, the proposed location avoids the need to redirect the bike path and avoids interference with the emergency vehicle lane that passes under the Pier.

However, the use of sandy beach for construction staging, will temporarily remove the area from public use during the construction period, which could have an adverse impact on public beach access and recreation use on the beach. The construction period will last approximately 6 to 7 months and is planned to commence in February or March of this year. Therefore, construction will continue into the summer period. However, in this particular case this alternative has the least impact to public access, by avoiding the use of the parking lot and minimizing access conflicts with the bike path.

The beach parking lot (1550 Lot) is the most heavily used parking lot in Santa Monica because of its shared use with the Pier, which is the major attraction in the area. During the winter months the lot occasionally reaches capacity (1,173 spaces) during warm weekends. During summer weekends the lot is also heavily used. However, because of the approximately 300 foot wide beach in front of the parking lot, the staging area, which will measure approximately 91 feet wide by 130 feet long, and approximately 12,000 square feet in total area, will leave a width of approximately 209 feet of beach area between the staging area and water. Furthermore, this back beach area, although it is used by beach goers for beach activities, because of the distance from the water's edge is not heavily used by beach goers. Moreover, as the beach continues to the north it widens to over 400 feet to the north of the 1550 Lot. Therefore, there is adequate open beach area in front of the staging area and to the north to mitigate the temporary loss of beach area during construction.

To possibly further mitigate the use of the beach, Commission staff asked the applicant to reduce the staging area as work progressed, with the assumption that the need for space would be less as work progressed and that the framed building could be used as staging space as well. The contractor, however, stated that since the City is limiting disruptions to the bike path and prohibiting the use of the adjacent public parking lot, all staging activity must be provided within the area in front of the restaurant and, as proposed, the staging

area is the minimum space needed to be able to store supplies, contractor trailers, service trucks, and to provide adequate space for delivery trucks that will be delivering large items up to the end of 6-7 month construction period (see Exhibit No. 8 for letter from contractor).

The location of the staging area on the sand north of the site and west of the beach bike path minimizes movement of construction equipment that would inconvenience or endanger pedestrians and users of the bike path. Together with the City's restriction on hours in which the bike path may be closed in order to allow movement of construction equipment, the proposed location avoids the need to redirect the bike path and avoids interference with the emergency vehicle lane that passes under the Pier. Furthermore, the use of the beach area for staging will not have a significant adverse impact on beach access and recreational activities. However, to ensure that the proposed project will comply with the City's permit requirements, as current approved, to limit disruptions to the public bike path and parking area, Special Condition No. 2, requiring the applicant to comply with the City's permit conditions, is required.

Furthermore, the only current access from the beach along the northern side of the pier is the stairway located to the west of the project site. The provision of an elevator, as proposed by the project, will enhance public access in the area and will provide alternative access, especially for the handicapped. However, as located and designed, the visibility of the elevator will be limited. The City has required that the applicant provide signage to notify the public of the availability and location of the elevator. In addition, the applicant has provided a preliminary signage plan showing the location and types of signs that are proposed. As currently located, the signs will be located on the proposed building along the Pier deck and at the beach level on the western side of the building. These locations are appropriate, however, signage should also be provided on the east side of the building to be visible from the bike path and parking lot to maximize public notification and use of the elevator. Therefore, as a condition (Special Condition No. 1), the applicant shall provide a signage plan indicating signs will be located and visible along the Pier deck, western side of the building and eastern side.

The applicants are in the process of obtaining encroachment permits from the California State Department of Parks and Recreation, for the walkway along the western side of the building leading to the elevator, minor modifications for ADA requirements to the stairs in the northeast corner leading to the patio area, and for the trash enclosure located along the eastern portion of the building. The Department's has indicated that preliminary approval has been given and final approval is pending. To ensure that the applicant has final approval from the Department of Parks and Recreation, Special Condition No. 2 requires the submittal of the Departments approval prior to issuance of this permit.

The Commission, therefore, finds, that only as conditioned is the project consistent with Section 30210, 30211, 30212, 30213, and 30221 of the Coastal Act and all applicable policies of the certified LUP.

**E. Parking**

Section 30252 of the Coastal Act states:

The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing non-automobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of on-site recreational facilities to serve the new development.

Policy #26 of the City's certified LUP states:

A minimum of 471 parking spaces shall be provided to serve the Pier. This is the amount of parking which existed on the Pier before it was damaged by storms in 1983. The provision of this parking may be phased as redevelopment of the Pier occurs, as long as adequate parking to serve Pier development is provided prior to or concurrent with the occupancy of any new development on the Pier. Parking may be relocated off the Pier, either within reasonable walking distance to the Pier, or in remote parking lots, if an effective shuttle system is implemented to transport people from the remote lots to the Pier. If a parking fee is charged at the remote lots, the fee shall not exceed that which is charged at the public beach parking lots. Relocation and replacement of parking spaces off the Pier shall be done on a one-to-one basis. Intensity of new development on the Pier shall correspond to that which can be accommodated by 471 parking spaces, as determined by the parking analysis. Additional parking demand created by further development shall be mitigated with additional parking, shuttle program, or other measure(s).

Because of the Pier's proximity to the State beach and to the public parking lots, development on the Pier could adversely impact public access to the beach. If the parking demand generated by new commercial development on the Pier exceeds the supply of parking that is available for the Pier, patrons of the Pier will utilize the parking that is needed to support general beachgoers, strollers, bicyclists, and joggers that depend on and use the parking that is available in the general vicinity of the Pier. Therefore, in order to determine if the proposed project is consistent with the access policies of the Coastal Act, the Commission must find that the parking demand generated by the proposed development is adequately supported by the supply of parking available for Pier use.

Prior to the 1983 storms that destroyed portions of the Pier, there were 79,488 square feet of development supported by 471 parking spaces on the Pier (area of development is based on the Pier Restoration Corporation's figures). In the certified LUP the Commission

agreed with the City that the Pier should be allowed to be reconstructed to the level of development that existed prior to the 1983 storm with the same amount of parking that also existed in 1983. In the certified LUP the Commission found that the Pier could be allowed to be built back to the pre-1983 storm intensity as long as the 471 parking spaces that were serving the pre-1983 storm level of intensity were provided either on or off the Pier. A development cap, based on pre-storm development, was set at 140,000 square feet. If new development exceeded the level of intensity that existed prior to 1983, the parking demand generated by the new development beyond the 1983 level must be mitigated with additional parking, shuttle program, or other measure(s).

Based on the City's current inventory of commercial uses on the Pier, there are 122,347 square feet of commercial space, including the existing Boathouse restaurant (see Exhibit No. 6). The new restaurant, which will replace the Boathouse, will be approximately 2,096 square feet larger. Therefore, with the new restaurant, the total commercial space on the Pier increases from 122,347 square feet to 124,443 square feet. With the proposed development, the Pier's commercial space will be 15,557 square feet below the 140,000 square foot cap.

Furthermore, as designed the amount of square footage for the dining area for the new restaurant will be 4,916 square feet. This is approximately 286 square feet less than the existing restaurant. The new restaurant will also add a 415 square foot retail space for the sale of restaurant merchandise. Based on the Commission's parking standard of 1 parking space per 50 square feet of public serviceable area for restaurant use and 1 parking spaces per 225 square feet the net change in parking demand over the previous use is 4 spaces less than the previous use. Therefore, since the new restaurant will replace the existing restaurant with a similar parking demand, there will be no net increase in the demand on the Pier's parking supply. The Commission, therefore, finds that the proposed project will be consistent with the Commission's past permit action for Pier development and with Section 30252 of the Coastal Act and with all applicable policies of the certified LUP.

#### **D. Visual Impacts**

Section 30251 of the Coastal Act states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

In addition policy #93 of the certified LUP states that:

Building height shall not exceed 2 stories, 30 feet, and the floor area ratio shall not exceed 1.0. Amusement rides shall not exceed a height of 115 feet above the Pier deck.

Major scenic resources in the City of Santa Monica are identified in the City's Local Coastal Land Use Plan and the City's Scenic Corridor Element. Scenic resources include the coastline, beach and bay, the Santa Monica Pier, Palisades bluff, and the Santa Monica Mountains. The project site is located on the Santa Monica Pier, where views of these scenic resources are visible from.

The viewsheds of the vicinity of the proposed project can basically be divided into two separate viewsheds. The first viewshed are those views from the area surrounding the Pier. The second viewshed are views from the Pier. View points from the surrounding area include Palisades Park, the beach, the Promenade, bike path, and portions of Ocean Avenue and Colorado Boulevard. From these surrounding areas the coastline and the ocean horizon are visible. However, because of the size and location of the Pier, the Pier is a significant, if not a central, element in the viewshed.

The Pier is developed with a number of structures, including a number of food service, retail and recreational buildings, including Pacific Park-- an amusement park-- and the Looff Hippodrome (Carousel) building. Existing development includes 20-40 foot buildings and large amusement rides extending to 30 and 85 feet. Development on the Pier extends from the promenade to the western end of the Pier. The existing restaurant is the only development located on the north side of the Pier, but is located in an area of the Pier that contains a large amount of Pier development.

The LUP limits development on the pier to a height of 30 feet, as measured from the Pier deck; however, amusement rides, are allowed a maximum height of 115 feet. The existing restaurant building extends approximately 28 feet from the beach level and 18 feet above the Pier deck. The proposed restaurant building will extend 40.9 feet from the first level to the top of the parapet and 27.8 feet in height as measured from the Pier deck to the top of the parapet. The proposed building would maintain the same footprint and would be similar to the existing structure in mass, bulk and height. Furthermore, according to the applicant, the project has been designed with materials and articulation to be compatible with the character of existing development on the Pier.

The building's facades will be constructed of corrugated metal panel and horizontal lap sidings. Other materials will include painted metal veneer, clear tempered glass, and blue canvas awnings. The building design has gone through extensive design review by the City's Design Review Board to ensure that the building conforms to the character of the area and minimizes visual impacts.

The partial third level floor with storage and office area would result in a taller structure than currently exists on the site. However, the additional floor allows the design to incorporate all mechanical equipment under the roof so that the equipment will not be

visible from the surrounding area. As designed, the proposed building is low-scale and below the maximum height limit of 30 feet from the Pier deck level. From the Pier deck and south viewpoints of the Pier, it appears to be a two-story building. This is compatible in scale with surrounding structures on the Pier's southern side, which are one or two stories in height from the Pier deck. The architect has designed the building to be viewed from 360 degrees, with each façade treated as significant because the building is visible from many vantage points that are considered to be significant view sheds.

Views of the ocean immediately south and east of the project site are partially obstructed by the existing structure. Since the proposed project would be constructed within the same footprint as the existing structure, additional height of the proposed structure would not result in further obstruction of ocean views.

The proposed project will add a new second level deck over the existing beach level deck. The deck will extend approximately 18 feet out from the main building, with a overhead cover. This new deck will add to the bulk of the building and have an impact on views. However, views that will be obstructed will be limited to the views from the Pier's access ramp. To minimize the impact, the decks will be of an open design with glass windscreens. As designed view obstruction of the beach and ocean due to the added second level deck will be minimal. Furthermore, the pier will continue to provide additional viewing along the entire north side of the pier since this is the only structure located on the north side. Ocean views from Palisades Park and Ocean Boulevard will not be obstructed because of the elevation difference.

As designed, the building will be compatible with the surrounding uses and with other structures on the Pier. Although the proposed building will be visible from the surrounding area, the visual impact of the project will not be significant and by replacing the existing building, the new building will enhance the visual quality of the area. However, to ensure that future development will not have an adverse visual impact, a future improvement condition (Special Condition No. 5) is required. The Commission, therefore, finds that as conditioned the proposed project is consistent with Section 30251 of the Coastal Act.

## **G. Hazards**

Section 30253 of the Coastal Act provides in part:

*New Development shall:*

- (1) *Minimize risks to life and property in areas of high geologic, flood, and fire hazards.*

The subject site is located on the Santa Monica Pier and extends from the pier deck down to the sandy beach below. The building is located approximately 300 feet from the mean high tide.

Even though the site is currently protected by a wide sandy beach, this does not preclude wave uprush damage and flooding from occurring during extraordinary circumstances. Strong storm events like those that occurred in 1982-83 and 1988 can cause large waves



to flood the beach. Though the subject site could be exposed to wave run-up, the Geotechnical Engineering Investigation prepared by Geotechnologies, Inc. did not identify wave run-up or flooding as a potential development concern at the subject site.

The applicant has submitted a wave run-up analysis study dated December 2003, prepared by Skelly Engineering. The analysis examined the impact of wave run-up and wave induced flooding (i.e. overtopping) upon the subject site under extreme oceanographic conditions over the next 75 years. The analysis determined that the subject site is located on a wide sandy beach and upon a portion of the beach that is approximately 300 feet wide. The study states that, based upon beach width monitoring data prepared by the U.S. Army Corps of Engineers, and aerial photographs, and the presence of the pier structure and a breakwater located northwest of the pier, it is extremely unlikely that the shoreline will erode significantly in the next 75 years. The study states that the subject site was not subject to wave attack during the 1988 storm event, which was considered a "400 year" wave event with an 18-year recurrence interval extreme high tide level.

The study analyzes the potential effects of wave run-up and overtopping for eroded beach conditions, including adverse conditions such as a 12 inch sea level rise over the next 75 years, super-elevation of the sea surface caused by wave set up, wind set up, inverse barometer conditions, wave group effects, and El Nino and sea level effects. The study states that the site is protected by the offshore breakwater and the beach is held in place by the shoreward end of the Santa Monica Pier. The runup analysis shows that the 75 year recurrence wave runup event may reach the site but due to the fact that the structure is constructed on caissons and the first floor elevation is about 1.5 feet above the adjacent beach grade no flooding or damage will occur.

Beach areas are dynamic environments which may be subject to unforeseen changes. Such changes may effect beach processes, including sand regimes. The mechanisms of sand replenishment are complex and may change over time, especially as beach process altering structures, such as jetties, are modified, either through damage or deliberate design. Therefore, the presence of a wide sandy beach at this time does not preclude wave uprush damage and flooding from occurring at the subject site in the future. The width of the beach may change, perhaps in combination with a strong storm event like those which occurred in 1982-83 and 1988, resulting in future wave and flood damage to the proposed development.

Although the proposed project will not be located any further seaward than the existing structures footprint, the proposed development is still subject to significant wave hazards, as described previously. Therefore, the Commission finds it necessary to require the recordation of an assumption-of-risk lease restriction (Special Condition No. 6) by the applicant, Bubba Gump Shrimp Company, and acknowledgment and acceptance from the Pier owner, City of Santa Monica (Special Condition No. 7), that the project is located in an area that is potentially subject to flooding and wave uprush hazards that could damage the applicant's property. The applicants are also notified that the Commission is not liable for such damage as a result of approving the permit for development. In addition, the

condition insures that future lessees of the property will be informed of the risks and the Commission's immunity of liability.

### Foundation Design

The proposed project requires construction of a foundation system. The proposed structure will be supported by new concrete caissons or piles tied together with grade beams. A *Geotechnical Engineering Investigation* prepared by Geotechnologies, Inc. dated June 8, 2001 was submitted by the applicant. The report indicates that the site is suitable for the proposed development. The *Geotechnical Engineering Investigation* includes certain recommendations to increase the degree of stability of the proposed development. The recommendations included in the *Geotechnical Engineering Investigation* address foundation design, earth pressure, seismic conditions, and liquefaction.

In order to assure that risks are minimized, the recommendations of the geotechnical consultant must be incorporated into the design of the project. As a condition of approval (Special Condition No. 8), the applicant shall submit final, foundation plans, site plans, floor plans, elevation plans, signed by the appropriately licensed professional indicating that the recommendations contained in the *Geotechnical Engineering Investigation* have been incorporated into the final design of the proposed project.

As conditioned by both Special Conditions No. 6, 7, and 8, the Commission finds that the proposed project is consistent with Section 30253 of the Coastal Act which requires that geologic and flood hazards be minimized, and that stability and structural integrity be assured.

### Future Shoreline Protective Devices

The Coastal Act limits construction of protective devices because they have a variety of negative impacts on coastal resources including adverse effects on sand supply, public access, coastal views, natural landforms, and overall shoreline beach dynamics on and off site, ultimately resulting in the loss of beach. Under Coastal Act Section 30235, a shoreline protective structure must be approved if all of the following conditions are met: (1) there is an existing principal structure in imminent danger from erosion; (2) shoreline altering construction is required to protect the existing threatened structure; and (3) the required protection is designed to eliminate or mitigate the adverse impacts on shoreline sand supply.

The Commission has generally interpreted Section 30235 to require the Commission to approve shoreline protection for development only for existing principal structures. The construction of a shoreline protective device to protect new development would not be required by Section 30235 of the Coastal Act. Proper coastal planning mandates that structures be sited far enough back from hazards to minimize the potential that they would be in danger and require a protective device. In addition, allowing new development that requires the construction of a shoreline protective device would be inconsistent with

Section 30251 of the Coastal Act which states that permitted development shall minimize the alteration of natural land forms, including beaches which would be subject to increased erosion from such a device.

In the case of the current project, the applicant does not propose the construction of any shoreline protective device to protect the proposed development. However, as previously discussed, the subject beachfront area has experienced flooding and erosion during severe storm events. It is not possible to completely predict what conditions the proposed structure may be subject to in the future. Consequently, it is conceivable the proposed structure may be subject to wave uprush hazards which could lead to a request for a protective device.

Shoreline protective devices can result in a number of adverse effects on the dynamic shoreline system and the public's beach ownership interests. First, shoreline protective devices can cause changes in the shoreline profile, particularly changes in the slope of the profile resulting from a reduced beach berm width. This may alter the usable area under public ownership. A beach that rests either temporarily or permanently at a steeper angle than under natural conditions will have less horizontal distance between the mean low water and mean high water lines. This reduces the actual area in which the public can pass on public property.

The second effect of a shoreline protective device on access is through a progressive loss of sand as shore material is not available to nourish the bar. The lack of an effective bar can allow such high wave energy on the shoreline that materials may be lost far offshore where it is no longer available to nourish the beach. A loss of area between the mean high water line and the actual water is a significant adverse impact on public access to the beach.

Third, shoreline protective devices such as revetments and bulkheads cumulatively effect shoreline sand supply and public access by causing accelerated and increased erosion on adjacent public beaches. As discussed earlier this portion of the beach is a wide sandy beach. However, the width of the beach can vary, as demonstrated by severe storm events. The Commission notes that if a seasonal eroded beach condition occurs with greater frequency due to the placement of a shoreline protective device on the subject site, then the subject beach would also accrete at a slower rate. The Commission also notes that many studies performed on both oscillating and eroding beaches have concluded that loss of beach occurs on both types of beaches where a shoreline protective device exists.

Fourth, if not sited in a landward location that ensures that the seawall is only acted upon during severe storm events, beach scour during the winter season will be accelerated because there is less beach area to dissipate the wave's energy. Finally, revetments, bulkheads, and seawalls interfere directly with public access by their occupation of beach area that will not only be unavailable during high tide and severe storm events but also potentially throughout the winter season.

Section 30253 (2) of the Coastal Act states that new development shall neither create nor contribute to erosion or geologic instability of the project site or surrounding area. Therefore, if the proposed structure requires a protective device in the future it would be inconsistent with Section 30253 of the Coastal Act because such devices contribute to beach erosion.

In addition, the construction of a shoreline protective device to protect new development would also conflict with Section 30251 of the Coastal Act which states that permitted development shall minimize the alteration of natural land forms, including sandy beach areas which would be subject to increased erosion from shoreline protective devices. The applicant is constructing the proposed residence using a caisson and grade beam foundation. The applicant's wave run-up analysis has indicated that the development is not subject to wave run-up and flooding. Based on the information provided by the applicant, no other mitigation measures, such as a seawall, are anticipated to be needed in the future. The coastal processes and physical conditions are such at this site that the project is not expected to engender the need for a seawall to protect the proposed development. There is currently a wide sandy beach in front of the proposed development, including the Pier and breakwater, that currently provide substantial protection from wave activity. However, the continued presence of a wide beach cannot be guaranteed.

To further ensure that the proposed project is consistent with Sections 30251 and 30253 of the Coastal Act, and to ensure that the proposed project does not result in future adverse effects to coastal processes, the Commission imposes Special Condition No. 9 which requires the applicant to record a lease restriction that would prohibit the applicant from constructing a shoreline protective device for the purpose of protecting any of the development proposed as part of this application. This condition is necessary because it is impossible to completely predict what conditions the proposed structure may be subject to in the future. Consequently, as conditioned, the development can be approved subject to Sections 30251 and 30253 of the Coastal Act.

By imposing the "No Future Shoreline Protective Device" special condition, the Commission requires that no shoreline protective devices shall ever be constructed to protect the development approved by this permit in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions or other natural hazards in the future. The Commission also requires that the applicant remove the structure if any government agency has ordered that the structure be removed due to wave uprush and flooding hazards. In addition, in the event that portions of the development are destroyed on the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

### Conclusion

Therefore, to ensure that the proposed project is consistent with Sections 30251 and 30253 of the Coastal Act, and to ensure that the proposed project does not result in future adverse effects to coastal processes, Special Conditions No. 6, 7 and 8, require the applicants to agree to record a lease restriction in any subsequent leases or subleases for an Assumption-of-Risk and No Future Shoreline Protective Devices restrictions. In addition, Special Condition No. 5 requires the applicant to submit final grading, foundation, site, floor, elevation plans, and drainage plans along with evidence that such plans conform with the recommendations of the geotechnical consultant. As conditioned, the Commission finds that the proposed project is consistent with Coastal Act Sections 30235, 30251 and 30253.

#### **D. Control of Polluted Runoff**

Section 30230 states:

*Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.*

Section 30231 states:

*The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

The proposed project poses a potential source of pollution due to contaminated runoff from the proposed from the proposed restaurant use. To mitigate potential water quality impacts, the City has adopted an Urban Runoff Ordinance. The ordinance requires projects to incorporate best management practices with extensive recommendations and measures to reduce or prevent contaminants from running off the site. The City requires all new development to achieve twenty- percent reduction of the projected runoff for the site and the use of oil and water separators or clarifiers to remove petroleum-based contaminants and other pollutants. All restaurants and other commercial cooking facilities are required to use grease interceptors and wash areas designed for washing floor mats with wastewater discharged directed to the City sewer. Furthermore, the City has required that the applicant cover the entire staging area with a wood platform to control debris and sand contamination from the construction activities.

Coastal Commission water quality staff has previously reviewed the City of Santa Monica's water quality standards for similar projects and have determined that the City's standards are consistent with standards imposed by the Commission. To ensure that the development complies with the City requirements, a special condition (Special Condition No. 4) is necessary that requires the applicant to agree to comply with the water quality requirements of the City. Furthermore, Special Condition No. 10 is necessary to ensure that Best Management Practices are implemented for the storage of construction material and debris, and that all material and debris is removed from the site after construction and the site is restored. The Commission, therefore, finds that, as conditioned, the development will be consistent with Section 30230 and 30231 of the Coastal Act.

#### **E. Local Coastal Program**

(a) Prior to certification of the Local Coastal Program, a Coastal Development Permit shall be issued if the issuing agency, or the Commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3.

In August 1992, the Commission certified, with suggested modifications, the land use plan portion of the City of Santa Monica's Local Coastal Program, excluding the area west of Ocean Avenue and Neilson Way (Beach Overlay District), the Santa Monica Pier and the Civic Center. On September 15, 1992, the City of Santa Monica accepted the LUP with suggested modifications. The proposed project is located west of Ocean Avenue and is located in the area of deferred certification.

The proposed project is located on the Pier which was included in the certification. As conditioned the project will not adversely impact coastal resources and beach access. The Commission, therefore, finds that the proposed project will be consistent with the Chapter 3 policies of the Coastal Act and will not prejudice the ability of the City to prepare a Local Coastal Program consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

#### **F. CEQA**

Section 13096 of the Commission's regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(i) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse impact, which the activity may have on the environment.

There are no negative impacts caused by the proposed development which have not been adequately mitigated. Therefore, the proposed project is found consistent with CEQA and the policies of the Coastal Act.